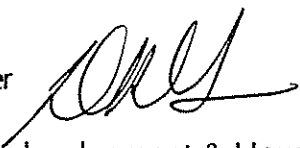


**DATE:** March 13, 2008

**TO:** CVRC Board of Directors

**VIA:** David R. Garcia, Chief Executive Officer 

**FROM:** Eric C. Crockett, Assistant Director of Redevelopment & Housing *ec*

**SUBJECT:** Exclusive Negotiating Agreement with Galaxy Commercial Holding, LLC for the Northwest Corner of F Street & Woodlawn Avenue (707 F Street)

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**EXECUTIVE SUMMARY**

Staff is recommending that the CVRC enter into an Exclusive Negotiating Agreement ("ENA") with Galaxy Commercial Holding, LLC ("Galaxy") for the former City corporation yard ("Corp Yard") located at 707 F Street, adjacent to the E Street Trolley Station. The CVRC and Galaxy have an existing ENA (executed November 8, 2007) for two motel sites located immediately north of the Corp Yard on the southwest corner of E Street and Woodlawn Avenue ("E & Woodlawn ENA"). Galaxy has an interest in those motel properties through a 300-day Purchase and Sale Agreement (entered into on August 15, 2007). In January 2008, Galaxy formally requested the inclusion of the City's former Corp Yard in the E & Woodlawn ENA, stating that the additional land would significantly enhance their ability, both physically and financially, to build a high quality, transit-friendly project in the E Street Visitor Transit Focus Area ("TFA"), consistent with the City's land use goals, plans, and policies. Based on Galaxy's qualifications and real estate interest in the motel properties, staff is recommending that the CVRC enter into a limited term ENA with Galaxy for the Corp Yard for 120 days, during which time Galaxy will prepare a study of the opportunities and constraints for development of the motel sites and Corp Yard, and staff will review Galaxy's financial studies and economic assumptions for concurrence with their conclusions about market conditions and project feasibility. During the ENA period, staff and Galaxy will seek technical input from the CVRC Board on the various studies and analyses.

**RECOMMENDATION**

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Approve the proposed 120-day ENA with Galaxy for the Corp Yard.

## DISCUSSION

Given the recent downturn in the real estate housing market, Galaxy believes that, with additional land, it can design and build a higher and better quality project, consistent with the City's land use goals, plans, and policies, than if a project were developed on just the motel sites alone. On January 16, 2007, Galaxy submitted a letter requesting the inclusion of the City's Corp Yard in the existing E & Woodlawn ENA. To provide Galaxy the opportunity to study the economic feasibility and marketability of a transit-oriented development project on a larger area of land, staff is recommending a separate, short-term ENA with Galaxy for the Corp Yard for 120 days, rather than amending the existing ENA. Staff is recommending that the CVRC enter into this ENA without a formal Request for Qualifications/Proposals process based on the following reasons: (1) Galaxy possesses an existing real estate interest in the adjacent motel properties through a 300-day Purchase and Sale Agreement; (2) Galaxy is highly qualified to develop a transit-oriented, urban infill project at this location; and (3) the CVRC previously qualified Galaxy to develop such a project at this location when it entered into the E & Woodlawn ENA.

### *Opportunities & Constraints*

During the 120 days, the ENA would require Galaxy to prepare and submit a comprehensive site design study of the opportunities and constraints for development of the site. The study will need to account for a wide array of factors, including adopted land use plans and policies (e.g., General Plan Update, Urban Core Specific Plan), current and future traffic and circulation patterns, land ownerships and parcel configurations, environmental conditions, and current and long-range plans for regional transit and transportation facilities.

The greatest area of uncertainty that the study will need to consider is the future grade separation of the trolley line at E Street, and the potential relocation of the trolley station and platform as a result of the separation. The future location of the trolley station/platform is critical to the design and construction of any transit-oriented development on this property and surrounding properties. Based on the opportunities and constraints that these factors pose, Galaxy and City/Agency staff will review whether a project is physically and economically feasible on the site, and determine how a project would need to be configured, phased, and designed. The study will also need to consider how the first few phases of a project on this site will impact or influence future development of surrounding properties in the UC-15 Subdistrict of the UCSP. As part of the study, Galaxy will also prepare and submit an economic study, preliminary traffic analysis, and phasing strategy. The City and Agency will own any documents and information submitted by Galaxy as part of these studies and reports.

*ENA Extension*

If, at the end of the 120 days, the CEO determines that Galaxy has adequately completed and submitted the required studies and reports, and the CEO concurs that a mutually desirable project is feasible on the property, the CEO will have the ability to extend the ENA for an additional 120 days to negotiate deal points and craft a Disposition and Development Agreement (“DDA”) for a project. Through this ENA process, the CVRC Board will play a key role in providing input and direction on the studies and any deal points.

**ENVIRONMENTAL REVIEW**

Approval of the ENA is exempt from the California Environmental Quality Act (“CEQA”) pursuant to Section 15061(b)(3) of the State CEQA Guidelines.

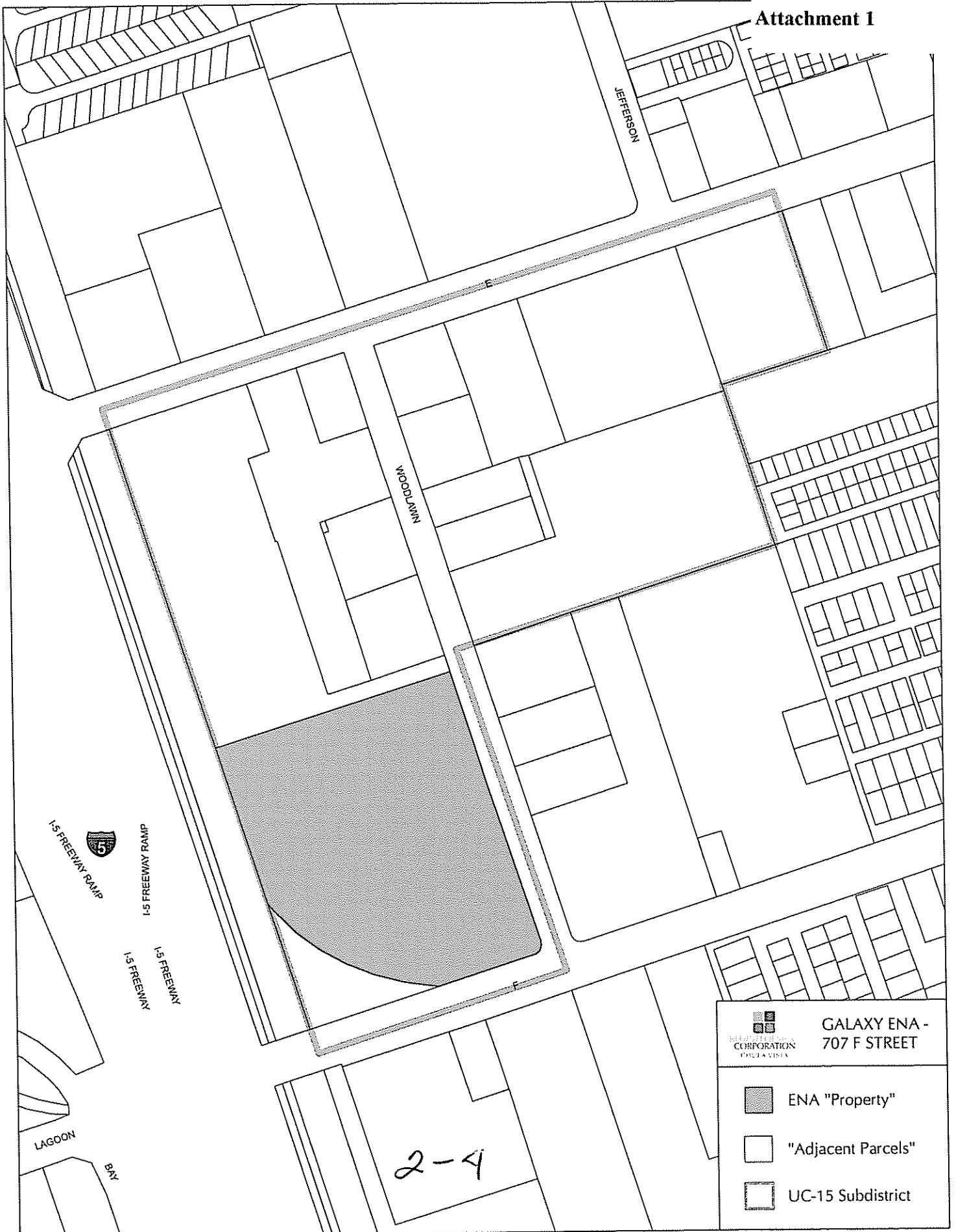
**DECISION MAKER CONFLICT**

Staff has reviewed the property holdings of the CVRC Directors and has found no property holdings within 500 feet of the boundaries of the property which is the subject of this action.

**ATTACHMENTS**

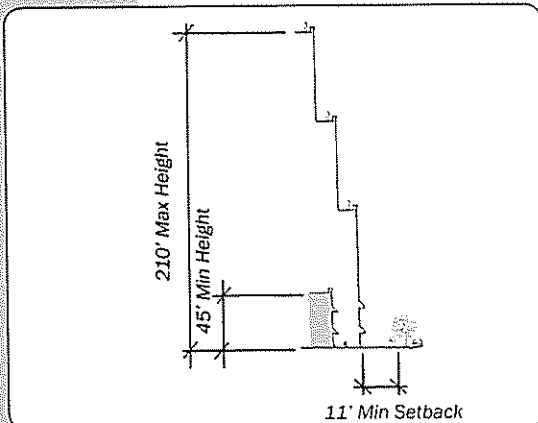
1. Vicinity Map
2. UC-15 Subdistrict Zoning Sheet
3. Disclosure Statement

**PREPARED BY:** Ken Lee, Principal Project Coordinator



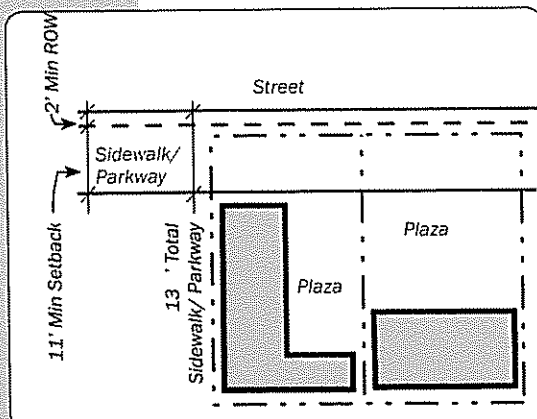
## UC-15 E Street Trolley (Transit Focus Area)

**Rezone of portions of this subdistrict not adopted.**  
**See CVMC 19.28 (R-3 zone) and City Design Manual for development regulations and design guidelines.**



Section View

Fig. 6.44



Plan View

Fig. 6.45

### Urban Regulations

- Floor Area Ratio:**  
Min: 4.0      Max: 6.0
- Lot Coverage:**  
Min: 45%      Max: 60%
- Building Height:**  
Min: 45'      Max: 210'
- Building Stepback:** Not mandatory
- Street Wall Frontage:** N/A
- Setbacks:**  
Street Min: 11'\*    Street Max: N/A  
(\*Applies only along E Street between I-5 and 300' east of I-5)
- Open Space Requirement:** 100 sf/du
- Primary Land Uses:**  
Residential: 90% Max  
Retail: 1% Min      10% Max  
Office: 10% Max (Not allowed on ground floor facade, except for access)  
Hospitality: 1% Min    10% Max

### Parking Regulations

- Parking Locations:**  
Any, except in front of building
- Residential Parking:**  
Min: 1 space/du  
Guest: 0 spaces  
Onsite Min: 100%
- Non-Residential Parking:**  
Min: 1 space/1,000 sf  
Onsite Min: None

Summary sheet does not reflect all regulations that may apply to each property. Please consult the remainder of the chapter for all criteria.

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## Disclosure Statement

Pursuant to Council Policy 101-01, prior to any action upon matters that will require discretionary action by the Council, Planning Commission and all other official bodies of the City, a statement of disclosure of certain ownership or financial interests, payments, or campaign contributions for a City of Chula Vista election must be filed. The following information must be disclosed:

1. List the names of all persons having a financial interest in the property that is the subject of the application or the contract, e.g., owner, applicant, contractor, subcontractor, material supplier.

Galaxy Commercial Holding LLC

2. If any person\* identified pursuant to (1) above is a corporation or partnership, list the names of all individuals with a \$2000 investment in the business (corporation/partnership) entity.

Raffi Cohen

3. If any person\* identified pursuant to (1) above is a non-profit organization or trust, list the names of any person serving as director of the non-profit organization or as trustee or beneficiary or trustor of the trust.

None

4. Please identify every person, including any agents, employees, consultants, or independent contractors you have assigned to represent you before the City in this matter.

Raffi Cohen

John Conway

Diane Erickson Todd Wgott

Lauren Cohen

Brian Argalini

Josiah Segal

Jeff Lawson (MVE)

5. Has any person\* associated with this contract had any financial dealings with an official\*\* of the City of Chula Vista as it relates to this contract within the past 12 months. Yes \_\_\_ No ☒

If Yes, briefly describe the nature of the financial interest the official\*\* may have in this contract.

6. Have you made a contribution of more than \$250 within the past twelve (12) months to a current member of the Chula Vista City Council? No ☒ Yes \_\_\_ If yes, which Council member?

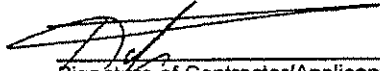
7. Have you provided more than \$340 (or an item of equivalent value) to an official\*\* of the City of Chula Vista in the past twelve (12) months? (This includes being a source of income, money to retire a legal debt, gift, loan, etc.)  
Yes \_\_\_ No ☒

If Yes, which official\*\* and what was the nature of item provided?

\_\_\_\_\_

\_\_\_\_\_

Date: 3/3/08

  
\_\_\_\_\_  
Signature of Contractor/Applicant

\_\_\_\_\_  
Print or type name of Contractor/Applicant

- \* Person is defined as: any individual, firm, co-partnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, receiver, syndicate, any other county, city, municipality, district, or other political subdivision, -or any other group or combination acting as a unit.
- \*\* Official includes, but is not limited to: Mayor, Council member, Chula Vista Redevelopment Corporation member, Planning Commissioner, member of a board, commission, or committee of the City, employee, or staff members.

September 8, 2006

CVRC RESOLUTION NO. \_\_\_\_

RESOLUTION OF THE CHULA VISTA REDEVELOPMENT  
CORPORATION APPROVING AN EXCLUSIVE NEGOTIATING  
AGREEMENT WITH GALAXY COMMERCIAL HOLDING, LLC  
FOR PROPERTY LOCATED AT 707 F STREET IN THE CITY OF  
CHULA VISTA

WHEREAS, it is the role and responsibility of the Chula Vista Redevelopment Corporation ("CVRC") and the Redevelopment Agency of the City of Chula Vista ("Agency") to promote economic vitality, create market confidence, encourage environmental health and remediation, create public benefits and amenities, and facilitate the development, reconstruction, and rehabilitation of residential, commercial, industrial, and retail uses in the City of Chula Vista; and

WHEREAS, an Exclusive Negotiating Agreement ("ENA") is an important redevelopment tool to the Agency to establish a legal and contractual framework for negotiations and provide a defined timeline for completion of predevelopment activities with a developer on a potential redevelopment project; and

WHEREAS, on November 8, 2007, Galaxy Commercial Holding, LLC ("Developer") and the CVRC entered into and executed an ENA for the development of three parcels located at the southwest corner of E Street and Woodlawn Avenue in the City of Chula Vista (Assessor Parcel Numbers 567-031-1700, 567-031-2800, 567-031-2900); and

WHEREAS, Developer has an interest in said parcels ("Adjacent Parcels") through a 300-day Purchase and Sale Agreement; and

WHEREAS, on January 16, 2008, Developer submitted a request to the Redevelopment Agency for an amendment to the November 8, 2007 ENA to include property located at 707 F Street in the City of Chula Vista; and

WHEREAS, that certain real property located at 707 F Street (Assessor Parcel Number 567-031-2700) consists of a single City-owned parcel that previously served as the City's corporation yard and encompasses approximately 257,858 square feet, or 5.98 acres, of territory located at the northwest corner of F Street and Woodlawn Avenue ("Property"); and

WHEREAS, Developer is conceptually proposing to develop an urban, mixed-use residential project ("Project") on the Property and Adjacent Parcels, in accordance with the City's land use goals and policies for the E Street Visitor Transit Focus Area of the General Plan, and the City's development standards and design guidelines of the UC-15 Subdistrict of the Urban Core Specific Plan ("UCSP"); and

WHEREAS, CVRC support staff has determined that Developer is qualified to design and develop a high quality project on the Property that is consistent with the goals of the

Agency's adopted Amended and Restated Redevelopment Plan for the Merged Chula Vista Redevelopment Project Area, containing the Town Centre II Redevelopment Project Area; and

WHEREAS, the CVRC became a legal entity on June 15, 2005, and became operational on February 23, 2006; and

WHEREAS, the CVRC is authorized under Chapter 2.55.060 of the Chula Vista Municipal Code ("CVMC") to approve exclusive negotiating agreements within redevelopment project areas on behalf of the Agency; and

WHEREAS, based on Developer's qualifications and current real estate interest in the Adjacent Parcels, it is in the interest of the Chula Vista Redevelopment Agency and the City of Chula Vista for the CVRC to execute and enter into an ENA with Developer for the proposed development site; and

WHEREAS, it is also in the interest of the Agency and City for the CVRC to execute and enter into said ENA without performing a formal Request for Qualifications/Proposals process based on the following reasons: (1) Developer possesses an existing real estate interest in the Adjacent Parcels through a 300-day Purchase and Sale Agreement; (2) Developer is highly qualified to develop a transit-oriented, urban infill project at this location; and (3) the CVRC previously qualified Developer to develop a project in the E Street Visitor Transit Focus Area, as designated by the City's General Plan, when it entered into the E & Woodlawn ENA; and

WHEREAS, the objectives of the CVRC in executing and entering into this ENA with Developer are to: (1) Study and analyze the physical and economic opportunities and constraints for the redevelopment of the Property based on various factors, including, but not limited to, the City's adopted land use plans and policies for the Property, adjacent land ownerships and property interests in the UC-15 Subdistrict, parcel configurations, circulation and traffic patterns, environmental factors, plans for regional transportation facilities, Bayfront planning and redevelopment activities, and public input; and (2) Review and analyze development scenarios for a Project to determine their financial viability and their consistency with the goals, objectives, policies, and standards of the City's 2005 General Plan Update and 2007 Urban Core Specific Plan; and

WHEREAS, approval of the ENA is exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15061(b)(3) of the State CEQA Guidelines; and

WHEREAS, state law and locally-adopted owner participation rules provide for the extension of owner participation rights to all property owners who would be affected by the proposed development; and

WHEREAS, no owner participation process is required at this time as the Property is currently owned by the City of Chula Vista.

NOW THEREFORE BE IT RESOLVED that the Chula Vista Redevelopment Corporation does hereby approve the Exclusive Negotiating Agreement with Galaxy Commercial Holding, LLC for Property located at 707 F Street in the City of Chula Vista, and authorizes the Chair to execute said Agreement.

Presented by:

Approved as to form by

\_\_\_\_\_  
Eric C. Crockett  
Secretary

\_\_\_\_\_  
Ann Moore  
General Counsel

PASSED, APPROVED, and ADOPTED by the Chula Vista Redevelopment Corporation of the City of Chula Vista, this 13<sup>th</sup> day of March 2008, by the following vote:

AYES: Directors:

NAYS: Directors:

ABSENT: Directors:

ABSTAINED: Directors:

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Christopher H. Lewis, Chair

ATTEST:

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Eric C. Crockett, Secretary

STATE OF CALIFORNIA                    )  
COUNTY OF SAN DIEGO                )  
CITY OF CHULA VISTA                  )

I, Eric C. Crockett, Secretary of the Chula Vista Redevelopment Corporation of the City of Chula Vista, California, do hereby certify that the foregoing CVRC Resolution No. \_\_\_\_ was duly passed, approved, and adopted by the Chula Vista Redevelopment Corporation at a regular meeting of the Chula Vista Redevelopment Corporation held on the 13<sup>th</sup> day of March 2008.

Executed this 13<sup>th</sup> day of March 2008.

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Eric C. Crockett, Secretary

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## EXCLUSIVE NEGOTIATING AGREEMENT

This Exclusive Negotiating Agreement ("Agreement"), dated as of this 13th day of March, 2008 ("Effective Date"), is made by and between the CHULA VISTA REDEVELOPMENT CORPORATION, a California nonprofit, public benefit corporation ("CVRC"), on behalf of and for the Redevelopment Agency of the City of Chula Vista, a public body, corporate and politic ("Agency"), and GALAXY COMMERCIAL HOLDING LLC, a Delaware limited liability company ("Developer"), with reference to the following facts:

### RECITALS

In furtherance of the objectives of the California Community Redevelopment Law, the Agency has undertaken a program for the redevelopment of certain areas within the City of Chula Vista ("City"), and in connection therewith is undertaking and carrying out activities for redevelopment in the Town Centre II Redevelopment Project Area ("Project Area") pursuant to and in furtherance of the Amended and Restated Redevelopment Plan for the Merged Chula Vista Project Area ("Redevelopment Plan").

The subject matter of this Agreement concerns that certain real property located within the Project Area as depicted in Exhibit "A" attached hereto. The subject property consists of a single City-owned parcel that previously served as the City's corporation yard, and encompasses approximately 257,858 square feet, or 5.98 acres, of territory located at 707 F Street in the City of Chula Vista, at the northwest corner of F Street and Woodlawn Avenue (Assessor Parcel Number 567-031-2700) ("Property").

Developer and CVRC have previously entered into and executed an Exclusive Negotiating Agreement on November 8, 2007 ("E & Woodlawn ENA") for the development of three adjacent parcels located immediately north of Property as depicted in Exhibit "A" hereto ("Adjacent Parcels"). Developer has an interest in Adjacent Parcels through a 300-day Purchase and Sale Agreement. Existing uses and structures on the Adjacent Parcels include a Best Western hotel located at 710 E Street (Assessor Parcel Number 567-031-1700) and The Traveler Inn motel located at 230 Woodlawn Avenue (Assessor Parcel Numbers 567-031-2800 and 567-031-2900).

On January 16, 2008, Developer submitted a request to the Redevelopment Agency for an amendment to the E & Woodlawn ENA to include the Property. Developer is conceptually proposing to develop an urban, mixed use residential project ("Project") on the Property and Adjacent Parcels, in accordance with the City's land use goals and policies for the E Street Visitor Transit Focus Area of the General Plan, and the City's development standards and design guidelines of the UC-15 Subdistrict of the Urban Core Specific Plan ("UCSP").

Based on Developer's qualifications and real estate interest in the Adjacent Parcels, CVRC desires to enter into an initial 120-day Exclusive Negotiating Agreement with the following objectives, consistent with the terms and conditions of this Agreement:

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- Study and analyze the physical and economic opportunities and constraints for the redevelopment of the Property based on various factors, including, but not limited to, the City's adopted land use plans and policies for the Property, adjacent land ownerships and property interests in the UC-15 Subdistrict, parcel configurations, circulation and traffic patterns, environmental factors, plans for regional transportation facilities, Bayfront planning and redevelopment activities, and public input; and
- Review and analyze development scenarios for a Project to determine their financial viability and their consistency with the goals, objectives, policies, and standards of the City's 2005 General Plan Update and 2007 Urban Core Specific Plan.

CVRC and Developer ("Parties") desire to enter into this Agreement in order to set forth the rights and duties of the Parties during the term of the Exclusive Negotiating Period.

NOW, THEREFORE, in consideration of the foregoing Recitals which the CVRC find are true and correct and the obligations contained herein, the Parties mutually agree as follows:

## 1. GOOD FAITH NEGOTIATIONS

A. CVRC and Developer agree to negotiate in good faith pursuant to the terms of this Agreement, a Disposition and Development Agreement ("DDA") or other form of agreement or agreements to be entered into between the Agency and Developer concerning the development of the Property by Developer. During the negotiation period and pursuant to Section 2 below, CVRC agrees not to negotiate with any other person or entity regarding development of the Property without the consent of Developer. Nothing in this Agreement shall be deemed a covenant, promise or commitment by the CVRC, the Agency, the City, or any agency of the City, with respect to the acquisition or divestment whether by sale, leasehold or any other instrument of property or the approval of the development project. CVRC's acceptance of this Agreement is merely an agreement to enter into a period of exclusive negotiations according to the terms hereof, reserving final discretion and approval by Agency as to any actions required of it.

B. Notwithstanding the foregoing, Developer acknowledges that Agency may receive from time to time, unsolicited alternative proposals for the development of the Property. Agency shall notify Developer within ten days after receiving an unsolicited development proposal for all or any portion of the Property. Agency and Developer shall confer in good faith to assess the benefits of the unsolicited proposal. The CVRC and Agency agree, however, to not enter into any other Exclusive Negotiating Agreement, or enter into negotiation with any other persons or entities, with regard to the Property during the negotiation period, as described in Section 2.A of this Agreement.

## 2. NEGOTIATION PERIOD

A. CVRC and Developer agree to negotiate for an initial period of one hundred twenty (120) days which shall commence on the Effective Date unless earlier terminated in accordance with the provisions hereof ("Initial Negotiation Period").

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B. If the Chief Executive Officer ("CEO") determines, at the end of the Initial Negotiation Period, that Developer has fulfilled all of its obligations as set forth in this Agreement herein, he or she, in his or her sole discretion and on behalf of the CVRC, is authorized to extend, in writing, the term of this Agreement for up to an additional one hundred twenty days (120) days ("Extended Negotiation Period") provided that at the end of the Initial Negotiation Period, neither the CVRC nor the Developer has exercised its right to terminate the Agreement, as provided herein, and the Developer is in full compliance with all terms and conditions hereof, the Developer concurs with such extension of the negotiation period, and the CEO has determined that: (i) there is a reasonable likelihood that the Developer will agree to terms and conditions for the development of the Project on the Property; and (ii) Agency staff will be able to recommend approval of a DDA or other agreement for development of the Property to the Agency prior to the expiration of the Extended Negotiation Period.

C. If, after expiration of the Initial Negotiation Period, or after the Extended Negotiation Period if this Agreement is extended, the Parties have not each approved and executed a DDA, or other agreement for development of the Property, then this Agreement shall automatically terminate and Developer shall have no further rights regarding the subject matter of this Agreement or the Property, and Agency shall be free to negotiate with any other persons or entities with regard to the Property.

D. Developer acknowledges that it is in the process of acquiring the Adjacent Parcels and opened an escrow account on or about August 15, 2007 and that escrow shall close 300 days after Developer has removed all contingencies pursuant to Developer's Purchase and Sale Agreement. Developer acknowledges and agrees that, should the Adjacent Parcels fall out of escrow, or should escrow not close for any reason, the CEO, in his or her sole discretion and on behalf of the CVRC, is authorized to terminate this Agreement.

### 3. OBLIGATIONS OF DEVELOPER

#### A. Comprehensive Site Design Study

During the Initial Negotiation Period, Developer shall prepare and submit a comprehensive site design study of the physical opportunities and constraints of a development project on the Property and surrounding properties within the UC-15 Subdistrict of the Urban Core Specific Plan ("Site Study"). Factors the Site Study should consider include, but are not limited to, the City's adopted land use plans and policies for the Property, adjacent land ownerships and property interests in the Subdistrict, parcel configurations, circulation and traffic patterns, environmental factors, plans for regional transportation facilities, Bayfront planning and redevelopment activities, and public input. The Site Study shall include proposed Floor Area Ratio ("FAR") distributions, phasing strategies, and pedestrian and vehicular circulation patterns on the Property and surrounding properties within the UC-15 Subdistrict. The Site Study shall also include site plans depicting Developer's proposed development scenarios.

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B. Economic Study

During the Initial Negotiation Period, Developer shall coordinate with Agency staff to prepare a detailed economic study of the financial feasibility and marketability of Developer's proposed development scenarios for the Property ("Economic Study"). The Economic Study shall include a description of Developer's project assumptions and include financial pro forma analyses of Developer's proposed development scenarios. The Economic Study shall be prepared in conjunction with the Site Study.

C. Preliminary Traffic Analysis

During the Initial Negotiation Period, Developer shall prepare and submit a preliminary traffic analysis to determine potential traffic impacts and mitigation requirements that could result from Developer's proposed development scenarios ("Traffic Analysis"). The Traffic Analysis shall be prepared in conjunction with the Site Study and should consider prior traffic studies, analyses, and reports prepared by or for the City as part of planning efforts related to the City's 2005 General Plan Update and 2007 Urban Core Specific Plan.

D. Phasing Plan

During the Initial Negotiation Period, Developer shall prepare and submit a phasing plan based upon Developer's Site Study, Economic Study, and Traffic Analysis ("Phasing Plan").

E. Financing

Developer shall provide the CVRC with reasonably satisfactory evidence that financing will be available for acquisition and development of the Property.

F. Reports and Studies, including Ownership, Publication, Reproduction and Use thereof

All finished or unfinished documents, data, studies, surveys, drawings, maps, reports and other materials submitted by Developer to the CVRC, City, Agency, or staff in conjunction with the Site Study, Economic Study, Traffic Analysis, and Phasing Plan, and any other reports, studies, exhibits or documents that may be required by the CVRC or staff shall become the sole and exclusive property of the City and Redevelopment Agency. No such materials or properties produced in whole or in part under this Agreement shall be subject to private use, copyrights or patent rights by Consultant in the United States or in any other country without the express written consent of City. City shall have unrestricted authority to publish, disclose (except as may be limited by the provisions of the Public Records Act), distribute, and otherwise use, copyright or patent, in whole or in part, any such reports, studies, data, statistics, forms or other materials or properties produced under this Agreement. Developer shall also make written or oral reports to the CVRC on the Developer's progress toward meeting its obligations under this Agreement, as requested by the CVRC or its staff, including all matters and all studies being prepared that are related to the development of the Project and other matters under negotiation, to the extent that they do not include confidential matters. All fees and expenses for engineers, architects,

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financial consultants, legal, planning or other consultants engaged by Developer to perform Developer's obligations set forth in this Agreement shall be the sole responsibility of Developer.

G. Public Input

As CVRC deems reasonably necessary or appropriate, presentations may be requested by the CVRC or staff at public forums to solicit input from citizens, businesses, stakeholders, and relevant interest groups.

H. Deposit

Within fourteen (14) days of the Effective Date, Developer shall deposit with CVRC \$10,000 (Ten Thousand Dollars) in immediately available funds ("ENA Deposit"). The ENA Deposit shall be used by CVRC to conduct project analysis for this Agreement including, but not limited to, payment for third party consultants and other reasonable costs incurred by the CVRC and Agency in conducting such analysis. Upon written request of Developer, CVRC shall provide Developer with regular accounting of funds expended. CVRC shall request additional deposits if the ENA Deposit is exhausted and CVRC determines further analysis is required. CVRC may cease negotiations and all activities of third party consultants until such time as ENA Deposit is replenished as reasonably requested by CVRC. Any deposit balance remaining upon the termination of the Agreement, less any interest earned on said deposit, shall be returned to Developer or shall be applied to any deposit required by a subsequent DDA or other agreement for development of the Property.

4. CVRC OBLIGATIONS AND DUE DILIGENCE

A. During the Initial Negotiation Period, CVRC shall conduct a due diligence investigation of the Developer's ability to own and/or operate the Project in a responsible manner. If the CEO determines in his or her sole discretion that Developer does not have the ability to successfully own and/or operate the Project in a responsible manner, the CEO may terminate this Agreement by delivering written notice thereof to Developer. CVRC's due diligence efforts may include, without limitation, the following:

1. Assessment of the proposed financing and the capacity of Developer to qualify for financing for the Project. At the written request of the CVRC, Agency or City, Developer also agrees as a continuing obligation to provide to the CVRC, Agency or City all documentation reasonably related for the CVRC, Agency or City to assess the proposed financing and the capacity of Developer to qualify for financing for the Project; and

2. Assessment of the capacity of Developer and its principal staff to effectively own and/or manage the Project, including the ability to carry out any ongoing management oversight responsibilities. At the written request of the CVRC, Agency or City, Developer also agrees as a continuing obligation to provide to the CVRC, Agency or City all documentation reasonably related for the CVRC, Agency or City to assess the capacity of Developer and its principal staff to effectively own and/or manage the Project, including the ability to carry out any ongoing management oversight responsibilities.

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B. CVRC agrees to cooperate with Developer in providing equity partner(s) and/or lender(s) of Developer with appropriate and necessary information for the Developer to fulfill its obligations hereunder, which information is not otherwise privileged.

C. CVRC shall also cooperate with Developer's professional consultants and associates in providing them with any information and assistance, so far as such information is not otherwise privileged, reasonably within the capacity, possession or control of the CVRC in connection with the preparation of the Developer's submissions to the CVRC.

5. DDA

The Parties hereby acknowledge and agree that, during the Initial Negotiation Period and, if applicable, the Extended Negotiation Period, the Parties shall use their respective good faith efforts to negotiate and enter into a DDA or other agreement for development of the Property which shall include, but not be limited to, the following: (i) the design of the Project by the Developer, which design and any required permits shall be subject to the approval by the CVRC and/or City; (ii) the construction of the Project by the Developer in accordance with final plans and specifications to be provided by the Developer and approved by the CVRC and/or City, pursuant to a detailed schedule of performance by the Developer; (iii) the operation and management of the Project by the Developer in a good and professional manner and subject to the covenants required by law; (iv) the maintenance of landscaping, buildings, and improvements in good condition and satisfactory state of repair so as to be attractive to the community; (v) the operation of the Project by the Developer in compliance with all equal opportunity standards established by federal, state and local law; (vi) provision by each contractor and/or subcontractor (as the case may require and as appropriate) performing work on the Project of the requisite performance bond and labor and materials payment bond to assure completion of the Project free of mechanics' liens; (vii) the Project shall be of a quality consistent with plans and renderings provided by Developer and approved by the CVRC; (viii) the terms and conditions upon which either party may terminate the DDA (e.g., the discovery of environmental issues/hazardous substances on the Property, unexpected development or construction costs).

6. ADDITIONAL TERMS AND OBLIGATIONS

A. Real Estate Commissions

CVRC shall not be liable for any real estate commission or brokerage fees which may arise herefrom. Developer agrees to indemnify and hold the CVRC, Agency and City harmless from and defend CVRC, Agency and City against claims for commissions or fees made by such party and against any damage or expense that the CVRC, Agency and City may incur, including expenses for attorney's fees and court costs.

B. Each Party to Bear its Own Cost

Each party shall bear its own costs incurred in connection with the negotiation of a DDA or other agreement for development of the Property, and the implementation of this Agreement, except as otherwise expressly provided herein or expressly agreed in writing.

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### C. Confidentiality

CVRC and Developer recognize that disclosures made by Developer pursuant to this Agreement may contain sensitive information and that the disclosure of such information to third parties could impose commercially unreasonable and/or uncompetitive burdens on Developer and, may correspondingly, diminish the value or fiscal benefit that may accrue to the CVRC upon the redevelopment of the Property by the Developer, if a future DDA or other agreement for development of the Property is entered into by the Parties. Developer acknowledges and agrees that CVRC is a public entity with a responsibility and, in many cases, legal obligation to conduct its business in a manner open and available to the public. Accordingly, any information provided by Developer to CVRC with respect to the Property, the Project or Developer may be disclosed to the public either purposely, inadvertently, or as a result of a public demand or order. With respect to any information provided that Developer reasonably deems and identifies in writing as proprietary and confidential in nature, CVRC agrees to exercise its best efforts to keep such information confidential. In addition, if CVRC determines that it is required under applicable law to disclose any information identified by Developer as proprietary and confidential in nature, CVRC shall notify Developer as least three business days before disclosure of such information which will provide Developer the opportunity to seek a protective order preventing such disclosure.

### D. Assignment

1. CVRC would not have entered into this Agreement but for Developer's unique qualifications and experience. Therefore, Developer's rights and obligations under this Agreement may not be assigned without the prior written approval of CVRC in its sole discretion. Notwithstanding the foregoing, subject to the prior written approval of the CEO, which shall not be unreasonably withheld, Developer may assign its rights hereunder to a new entity formed by the Developer for purposes of developing the Project. Such new entity may include additional parties provided that the Developer retains responsibility for fulfilling its obligations hereunder and Developer retains management control and authority over the entity and the Project.

2. Upon the assignment, sale or transfer, whether voluntary or involuntary, of more than fifty percent (50%) of the membership, ownership, management or control of the Developer (other than such changes occasioned by the death or incapacity of any individual) that has not been approved by the CVRC, the CVRC may terminate this Agreement, without liability, by sending written notice of termination to Developer.

### E. Nondiscrimination

Developer shall not discriminate against nor segregate any person, or group of persons on account of race, color, creed, religion, sex, marital status, disability, national origin or ancestry in undertaking its obligations under this Agreement.

## 7. RETENTION OF DISCRETION

A. By its execution of this Agreement, CVRC is not committing itself or agreeing to undertake any activity requiring the subsequent exercise of discretion by CVRC, Agency, or City, or any department thereof including, but not limited to, the approval and execution of a DDA or other agreement for development of the Property; the proposal, amendment, or approval of any land use regulation governing the Property; the provision of financial assistance for the development of any public or private interest in real property; the authorization or obligation to use the Agency's eminent domain authority; or, any other such activity.

B. Developer understands and agrees that the CVRC, Agency, and City, in their respective legislative roles, reserve the right to exercise their discretion as to all matters which the CVRC, Agency, and City are by law entitled or required to exercise such discretion, including but not limited to, entitlements or permits for the development of the Property and adoption of any amendments to policy documents (including the General Plan, Urban Core Specific Plan, and Redevelopment Plans). In addition, Developer understands and agrees that the entitlements and any other documents shall be subject to and brought to the CVRC, Agency, or City, as appropriate, for consideration in accordance with applicable legal requirements, including laws related to notice, public hearings, due process, and the California Environmental Quality Act.

C. Developer acknowledges that any plans processed for the Property will be based upon the current General Plan and Zoning Code of the City. Additionally, Developer acknowledges that the City is still in the process of completing certain portions of the Urban Core Specific Plan ("UCSP"). Developer acknowledges and agrees that the City may consider a number of development alternatives for the Property for consideration by the City Council as part of City's UCSP process. Developer further acknowledges that the City is currently in litigation over the UCSP and that said litigation could affect the Property and the Developer's interests therein. Developer agrees and acknowledges that the processing, adoption and/or amendment of the General Plan or the UCSP by the City is not a consideration in its proceeding with this Agreement or the proposed development project and Developer may need to request amendments to the General Plan or UCSP. The General Plan and UCSP are legislative actions and this agreement does not limit or in any way interfere with the City Council's ability to exercise their discretionary authority as it relates to these or any other legislative actions. Developer acknowledges and agrees that the exercise of the City's legislative discretion, whether by the City Council's own actions or pursuant to or as a result of any litigation shall not form the basis of breach of this Agreement, express or implied, or any other claims against the City.

D. This Agreement does not constitute a disposition of property or exercise of control over property by CVRC and does not require a public hearing. CVRC execution of this Agreement is merely an agreement to enter into a period of exclusive negotiations according to the terms hereof, reserving final discretion and approval by Agency as to any proposed DDA or other agreement for development of the Property and all proceedings and decisions in connection therewith. The parties understand that Agency has the complete and unfettered discretion to reject a DDA or other agreement for development of the Property without explanation or cause. The risk of loss of all processing, design and developmental costs incurred by the Developer

prior to a DDA or other agreement for development of the Property approval shall be absorbed entirely by Developer. As to any matter which the CVRC and/or Agency may be required to exercise its unfettered discretion in advancing the Project to completion, nothing herein shall obligate the CVRC and/or Agency to exercise its discretion in any particular manner, and any exercise of discretion reserved hereunder or required by law, shall not be deemed to constitute a breach of CVRC duties under this agreement.

## 8. TERMINATION RIGHTS

Notwithstanding the Initial or Extended Negotiating Periods hereinabove set forth, either party may terminate this Agreement if the other party has materially defaulted in its obligations herein set forth, and the terminating party has provided defaulting party with written notification of such determination, and the defaulting party has refused to cure same. The written notification shall set forth the nature of the actions required to cure such default if curable. Defaulting party shall have 30 days from the date of the written notification to cure such default. If such default is not cured within the 30 days, the termination shall be deemed effective. Any failure or delay by a party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any rights or remedies associated with a default. Each party shall also have the right to terminate this Agreement in the event that CVRC or Developer determines that: (a) the Project is infeasible or not in the public interest; or (b) the parties reach an impasse in their negotiation of the DDA, or other agreement for development of the Property, which cannot be resolved after good faith efforts.

## 9. GENERAL PROVISIONS

### A. Addresses for Notice

#### Developer's Address for Notice:

Galaxy Commercial Holding, LLC  
8906 W. Olympic Boulevard, Suite 200  
Beverly Hills, California 90211  
Attention: Raffi Cohen, President  
Telephone: (310) 273-7233  
Fax: (310) 273-7239  
Copy to: Diane Erickson, Vice President/Project Manager

#### CVRC's Address for Notice:

City of Chula Vista  
Redevelopment Agency & Housing Authority  
276 Fourth Avenue  
Chula Vista, CA 91910  
Attention: Eric Crockett, Assistant Director, Redevelopment & Housing  
Telephone: (619) 691-5047  
Fax: (619) 476-5310  
Copy to: Ken Lee, Principal Project Coordinator

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B. Authority

Each party represents that it has full right, power and authority to execute this Agreement and to perform its obligations hereunder, without the need for any further action under its governing instruments, and the parties executing this Agreement on the behalf of such party are duly authorized agents with authority to do so.

C. Counterparts

This Agreement may be executed in multiple copies, each of which shall be deemed an original, but all of which shall constitute one Agreement after each party has signed such a counterpart.

D. Entire Agreement

This Agreement together with all exhibits attached hereto and other agreements expressly referred to herein, constitutes the entire Agreement between the parties with respect to the subject matter contained herein. All prior or contemporaneous agreements, understandings, representations, warranties and statements, oral or written, are superseded.

E. Further Assurances

The parties agree to perform such further acts and to execute and deliver such additional documents and instruments as may be reasonably required in order to carry out the provisions of this Agreement and the intentions of the parties.

F. No Third Party Beneficiaries

There are no other parties to this Agreement, express or implied, direct or indirect. CVRC and Developer acknowledge that it is not their intent to create any third party beneficiaries to this Agreement.

G. Exclusive Remedies

1. In the event of default by either party to this Agreement, the Parties shall have the remedies of specific performance, mandamus, injunction and other equitable and legal remedies. Neither party shall have the remedy of monetary damages against the other; provided, however, that the award of costs of litigation and attorneys' fees shall not constitute damages based upon breach of this Agreement where such an award is limited to the reasonable costs of litigation incurred by the Parties.

2. Each party acknowledges that it is aware of the meaning and legal effect of California Civil Code Section 1542, which provides:

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A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him would have materially affected his settlement with debtor.

California Civil Code Section 1542 notwithstanding, it is the intention of the Parties to be bound by the limitation on damages and remedies set forth in this Section 7G, and the Parties hereby release any and all claims against each other for monetary damages or other legal or equitable relief related to any breach of this Agreement, whether or not any such released claims were known to either of the Parties as of the date of this Agreement. The Parties each waive the benefits of California Civil Code Section 1542 and all other statutes and judicial decisions of similar effect with regard to the limitations on damages and remedies and waivers of any such damage and remedies contained in this Section 7G.

#### H. Indemnity

Developer shall indemnify, protect, defend and hold harmless CVRC, City and Agency, its elected officials, employees and agents from and against any and all challenges to this Agreement, or any and all losses, liabilities, damages, claims or costs (including attorneys' fees) arising from Developer's negligent acts, errors, or omissions with respect its obligations hereunder or the Property, excluding any such losses arising from the sole negligence or sole willful misconduct of CVRC, City or Agency, its elected officials, employees, and agents. This indemnity obligation shall survive the termination of this Agreement.

#### I. Time is of the Essence

Time is of the essence for each of Developer's obligations under this Agreement.

#### J. Headings

The captions and headings in this Agreement are for convenience only and shall not define or limit the provisions hereof.

[NEXT PAGE IS SIGNATURE PAGE]

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## Signature Page

## Exclusive Negotiating Agreement

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date set forth above, thereby indicating the consent of their principals.

CHULA VISTA  
REDEVELOPMENT CORPORATION

By: Christopher H. Lewis  
Chair

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: Ann Moore  
General Counsel

Date: \_\_\_\_\_

ATTEST:

By: Eric C. Crockett  
Secretary

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EXHIBIT "A"

